

ORIGINAL

FILED

December 3 2013

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. _____

JOHN M. MORRISON
FREDERICK F. SHERWOOD
MORRISON, SHERWOOD WILSON & DEOLA, PLLP
401 North Last Chance Gulch • P.O. BOX 557
Helena MT 59624-0557
(406) 442-3261 • (406) 443-7294 Fax
john@mmslawgroup.com
rick@mmslawgroup.com
Attorneys for Petitioners

FILED

DEC 03 2013

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MONTANA SUPREME COURT

<p>MEA-MFT, the Montana State AFL-CIO, the Montana Public Employees Association, the Montana Human Rights Network and the American Federation of State, County and Municipal Employees, Montana Women Vote, and Western Native Voice,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>STATE OF MONTANA HONORABLE TIM FOX, in his capacity as Attorney General,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">PETITION CHALLENGING THE LEGAL SUFFICIENCY OF LR-126</p>
--	--

COME NOW the Petitioners by and through their attorneys Morrison, Sherwood, Wilson & Deola, PLLP, and for their complaint in the above captioned matter allege as follows:

I. PARTIES

1. Petitioner MEA-MFT is a labor association, organized under the laws of the state of Montana, with its principal place of business in Helena, Montana. MEA-MFT represents some 18,000 public and private sector employees across Montana.

2. Petitioner Montana State AFL-CIO is a state federation of labor, with its principal place of business in Helena, Montana, representing almost 47,000 members across Montana.

3. Petitioner Montana Public Employees Association (MPEA), a labor association with its principal place of business in Helena, Montana, represents 7,000 employees in state, county, city governments as well as classified employees of various school districts and the university system.

4. Petitioner Montana Human Rights Network is a non-profit grassroots membership organization with over 1,400 members, having its principle place of business in Helena, Montana.

5. Petitioner American Federation of State, County and Municipal Employees, Montana Council 9 (AFSCME) is a labor association with its principal

place of business in Helena, Montana, representing approximately 2,000 employees in state, county, city governments as well as classified employees of various school districts and the university system.

6. Petitioner Montana Women Vote is a coalition of nonprofit organizations, with its principal place of business in Missoula, Montana, working to educate and mobilize low-income women and their supporters to participate in the democratic process.

7. Petitioner Western Native Voice is a Native American community organizing Montana nonprofit corporation that works across Montana to strengthen Native American communities on reservations and in cities.

8. Respondent Tim Fox is the Attorney General for the State of Montana. He is named here in his official capacity as the Respondent because this action challenges the Attorney General's determination of the legal sufficiency of a legislative referendum.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction of this proceeding under § 33-27-316, MCA.

10. Plaintiffs seek a determination of legal insufficiency, pursuant to § 13-27-316(2).

III. FACTUAL ALLEGATIONS

11. In the 2013 legislative session, the Montana legislature considered SB-405. A copy of SB-405 is attached hereto as Exhibit 1. SB-405 was not passed into law through submission to the Governor but instead was passed by the legislature as a referendum. SB-405 is currently designated as Legislative Referendum 126 (LR-126), which is scheduled to appear on the ballot in the November election of 2014. LR-126 is attached hereto as Exhibit 2.

12. SB-405/LR-126 purports to amend §§ 3-2-301, 13-2-304, 13-19-207, and 61-5-107, MCA, to eliminate voter registration on Election Day and move the registration deadline back to 5:00 p.m. on the day before Election Day.

13. SB-405/LR-126 contains a false statement in its title. To wit, the title of the referendum reads:

AN ACT PROTECTING THE INTEGRITY OF MONTANA ELECTIONS BY ENDING LATE VOTER REGISTRATION ON THE FRIDAY BEFORE ELECTION DAY AND ELIMINATING ELECTION DAY REGISTRATION; ENSURING COMPLIANCE WITH THE NATIONAL VOTER REGISTRATION ACT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2014; AMENDING SECTIONS 13-2-301, 13-2-304, 13-19-207, AND 61-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

(Emphasis supplied.)

The underlined language is inaccurate because none of the changes effected by LR-126 ensure compliance with the National Voter Registration Act (NVRA). 42 U.S.C. § 1973gg. Nothing in LR-126 is required in any way by the NVRA.

14. The Montana Code requires that the ballot statements for ballot issues be true and impartial. § 13-27-312(4), MCA. The Montana Code also requires the Attorney General to review the ballot issue for legal sufficiency, which includes compliance with the requirement that ballot statements be true. The title of SB-405/L-126 is required to be included as part of the statements presented to voters on the ballot. Section 13-27-501 (2) and (3), MCA. Further, § 6 of SB-405 specifically states that the measure shall be submitted to the electorate “by printing on the ballot the full title of (this act).”

15. Article V, § 11(3) of the Montana Constitution mandates that the subject of a bill be “clearly expressed in its title,” which implicitly includes the requirement that the title of the bill be truthful and accurate.

16. Despite the inaccurate language underscored above, the Attorney General returned the referendum to the Secretary of State on or about October 23, 2013 finding the referendum legally sufficient. The letter from the Attorney General to the Secretary of State is attached hereto as Exhibit 3.

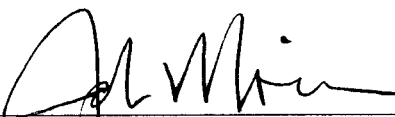
17. For the reasons described above, SB-405/LR-126 is legally insufficient as a ballot measure.

WHEREFORE, Plaintiffs pray judgment against Defendant as follows:

1. That the Court find, pursuant to §13-27-316(3)(c)(iii), MCA, that the Attorney General's legal sufficiency determination was incorrect and that the proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, that the issue is void and that it may not appear on the ballot;
2. That the Court enter such injunctive relief as appropriate to effectuate the Court's finding;
3. That Petitioners be awarded their attorney fees and costs, and
4. That the Court allow any further relief which it may deem just, equitable and proper.

DATED this 3 day of December, 2013

MORRISON, SHERWOOD WILSON & DEOLA, PLLP

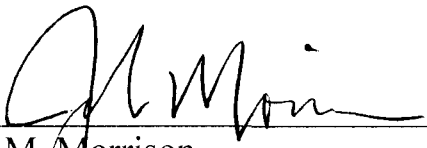
BY: 

John M. Morrison
Frederick Sherwood
Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double spaced; and the word count calculated by Microsoft Word 2008 for Mac is 870 words, excluding the caption, certificate of service and certificate of compliance.

BY: _____


John M. Morrison
Frederick Sherwood
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 3RD day of December, 2013, I have hand-filed the original and nine copies of the foregoing PETITION CHALLENGING THE LEGAL SUFFICIENCY OF LR-126 with the Clerk of the Montana Supreme Court, and that I have served via first-class mail true and accurate copies of the foregoing upon the following:

Tim Fox Office of the Attorney General Department of Justice P.O. Box 201401 Helena MT 59620-1401	Linda McCulloch Montana Secretary of State P.O. Box 202801 Helena MT 59620-2801
---	--

BY: _____

